IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.A No. 528/1999

Decided on: March 14, 2006

State of Himachal Pradesh **…Appellant.**

VERSUS

Ishwar Dass **…Respondent.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?[1] Yes.

For the appellant: **Mr. C.B. Singh, Deputy Advocate General.**

For the respondent: **Mr. J.L. Bhardwaj, Advocate.**

Surjit Singh, Judge (Oral)

State of Himachal Pradesh has filed this appeal against the judgment, dated 29.7.1999, of the trial Magistrate, whereby respondent Ishwar Dass, who was sent up for trial for offences under Sections 324 and 506, IPC, has been acquitted. The learned counsel for the appellant-State says that the learned trial Court has not appreciated the evidence correctly and because of that the respondent has gone unpunished.

2. Prosecution case, as per the record, may be summed up thus. PW-4, Sant Ram and his brothers and cousins, had gone to clear bushes from certain parcel of land belonging to them on 26th May, 1996. Around 7 a.m., the respondent went there and started

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Whether the reporters of the local papers may be allowed to see the judgment? Yes.

hurling abuses at them. He claimed that the land from which the bushes were being cleared belonged to him. When Sant Ram (PW-4) and his brothers and cousins objected to the use of abusive language by the respondent and refuted his claim regarding the ownership of land, the respondent is alleged to have aimed a blow of a *darat,* which he was carrying with him, on the head of PW-4 Sant Ram. The latter warded off the blow by raising his right hand. This caused injuries to the fingers and the middle of palm of the right hand of Sant Ram. The matter was reported to the police. Police got Sant Ram medically examined. Four injuries were noticed on the palmer side of his hand. The injuries, according to the doctor, appeared to have been caused by some sharp edged weapon.

3. The trial Magistrate charged the respondent with offences under Sections 324 and 506, IPC, and on his pleading not guilty proceeded to try him. At the end of the trial, the trial Magistrate held that there was a civil dispute going on between the respondent and the complainant side with respect to the ownership of the land from where bushes were being cleared and it appeared that the respondent had been falsely implicated. The reasons recorded by the learned trial Magistrate are that no independent witness from the locality had come forward to support the prosecution version. Another reason recorded by the trial Magistrate is that the weapon, which was produced in the Court, was stated to be not the same as had allegedly been used by the respondent, when it was shown to the complainant.

4. Having heard the learned Deputy Advocate General, representing the appellant-State, and the learned counsel for the respondent and having perused the record, I feel that the learned trial

Magistrate was not right in holding that the charge against the respondent does not stand established.

5. PW-4 Sant Ram categorically stated that he was attacked with a *darat* by the respondent and that when he tried to ward off the blow by raising his hand, he sustained injuries on his right hand. His testimony is corroborated by medico-legal evidence adduced by the prosecution in the form of testimony of PW-3, Dr. Yuv Raj and medico-legal certificate Ex.PW-3/A and also by PW-5 Roshan Lal and PW-6 Govind Ram, who were with him on the spot and were helping him clear the bushes. From the trend of cross-examination of these witnesses, though it appears that the respondent claimed that there was dispute going on between the parties with respect to the site where the bushes were being cleared, yet the respondent in his statement, under Section 313, Cr.P.C., did not take any specific plea that he went to the spot to prevent the complainant and his brothers and cousins from clearing the bushes from the land belonging to him. His plea is of denial simpliciter. He says that he has been falsely implicated due to personal grudge and enmity. No explanation has been offered for the injuries, which were there on the hand of Sant Ram and which, according to the doctor, have been caused by a sharp edged weapon. No suggestion was put to the doctor that the injuries could have been self inflicted or self sustained.

6. Minor contradictions in the prosecution evidence, as to the extent of force with which the blow was intended to be inflicted, are of little significance. The evidence that Sant Ram sustained injuries by means of a sharp edged weapon around the time when the incident is alleged to have taken place remains unshattered.

7. The fact that the weapon that was produced in the Court was stated to be different from the one with which the injuries were caused to PW-4 cannot make any difference. It is a matter of common knowledge that the police people, with a view to strengthening their case, do padding and when they do not find the weapon actually used, they introduce a different weapon. The weapon that was produced in the Court did not have the handle and that is why PW-5 says that it was not the same weapon. The seizure Memo Ex. PW-4/A reads that the *darat*, which was taken into possession, had a handle. May be that the handle of the *darat* got broken, when it was with the police and that is why the weapon, that was produced in the Court, was without handle and because of the missing handle, PW-4 could not identify it with the weapon of offence.

8. In view of the abovestated position, I have no manner of doubt that the learned trial Magistrate has gravely erred in concluding that the evidence on record does not prove the case against the respondent beyond reasonable doubt. Consequently, the appeal is accepted, judgment of the trial Magistrate, acquitting the respondent, is set aside and the respondent is convicted of the offence under Section 324, IPC. Since the incident had taken place about 10 years back, I take a lenient view in the matter of award of punishment and sentence the respondent to pay a fine of Rs.500/- only. In case the respondent fails to pay the amount of fine, he shall undergo simple imprisonment for one month.

(Surjit Singh)
Judge.

March 14, 2006(sd)